

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL DURHAM,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 07-370-***
	:	
THOMAS CARROLL , Warden,	:	
and JOSEPH R. BIDEN, III , Attorney	:	
General of the State of Delaware,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Michael Durham, has applied for federal habeas relief, filing a habeas petition challenging his 2003 conviction and sentence for first degree burglary, first degree attempted robbery, and a variety of firearms and other charges. D.I. 1. By the terms of the Court's order, the answer is due to be filed on November 7, 2007. D.I. 14.

2. Counsel has substantially completed the answer. But pursuant to office policy, all court submissions must be reviewed by the Chief of Appeals before filing. Because the Chief of Appeals remains out of the office, additional time is needed to complete the answer and have it reviewed in the ordinary course of business. The Chief anticipates returning to the office tomorrow.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment

to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' third request for an extension of time in this case.

5. Respondents submit that an extension of time to and including November 9, 2007, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: November 7, 2007

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: November 7, 2007

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v.

THOMAS CARROLL, Warden,
and **JOSEPH R. BIDEN, III**, Attorney
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Respondents.

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Civ. Act. No. 07-370-***

ORDER

This ____ day of _____, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before November 9,
2007.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on November 7, 2007, I have mailed by United States Postal Service, the same document to the following non-registered participant:

Michael Durham
SBI No. 161286
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
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